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No. 92-190

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF IDAHO, EX REL. DIRECTOR,
IDAHO DEPARTMENT OF WATER RESOURCES

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF IDAHO

REPLY BRIEF FOR THE UNITED STATES

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The issue in this case is whether, when a State joins the United States in a water right adjudication suit pursuant to the McCarran Amendment, 43 U.S.C. 666, the State may refuse to recognize the United States' water right claims unless the United States pays "filing fees," which finance the State's costs in the adjudication. We argue in our opening brief that the United States is exempt from such filing fees—which are estimated to total more than $10 million in this litigation alone—because the McCarran Amendment does not contain a clear and unambiguous waiver of the United States' immunity from fee assessments. The McCarran Amendment's "joinder" and "pleading" provisions contain no consent to imposition of filing fees against the United States, U.S.

Br. 18-30, and the Amendment's "judgment" provision confirms that no such consent was intended, U.S. Br. 31-38. Idaho and the amici States fail to overcome those textual obstacles to imposing monetary assessments against the United States.

1. Idaho and the amici States dispute our submission that the McCarran Amendment—like other waivers of federal sovereign immunity—should be construed strictly in favor of the sovereign and not enlarged beyond what the language requires. Compare U.S. Br. 15-17, with Idaho Br. 14-18, and Amici States Br. 4-6. According to Idaho, the McCarran Amendment is a "'sweeping' waiver[] of sovereign immunity" and 'should therefore be construed by "pa[ying] special attention to the Congressional policy underlying the language of the Amendment." Idaho Br. 15; see also *id.* at 40-41; but see Idaho Br. in Opp. 12-14 (conceding that the waiver must be "clear and unambiguous"). The amici States similarly assert that "[w]hen a statute contains a broad waiver of sovereign immunity, the Court has neither looked solely to the statutory text to determine the scope of the waiver nor has it required that the scope of the waiver be stated unambiguously." Amici States Br. 4-5.

Idaho and the amici States are wrong at the outset in characterizing the McCarran Amendment as a "sweeping" or "broad" waiver of immunity. The Amendment is not written in "simple, sweeping language" (Idaho Br. 13); indeed, its lengthy text is phrased in carefully circumscribed terms. 43 U.S.C. 666. See U.S. Br. 2, 18; pp. 4-7, *infra*. This Court has never described the McCarran Amendment as a "sweeping" or "broad" waiver of immunity, and

the decisions Idaho cites provide no basis for that characterization. See Idaho Br. 14-17.[1]

In any event, Idaho's proposed approach is a stark departure from the established rules for construing waivers of sovereign immunity. This Court has articulated clear and uniformly applicable principles to govern construction of waivers. See, *e.g.*, *United States* v. *Nordic Village, Inc.*, 112 S. Ct. 1011, 1014-1015 (1992). In every case, a waiver of sovereign immunity must be strictly construed in favor of the sovereign and not enlarged beyond what the statutory language requires. *Ibid.* See, *e.g.*, *United States* v. *N.Y. Rayon Importing Co. (#2)*, 329 U.S. 654, 660 (1947); see also Idaho Br. in Opp. 12-14. This Court has never suggested that the McCarran Amendment is exempt from those principles. Nor has it suggested that the principles for construing sovereign immunity waivers vary, depending on whether the statute at issue manifests a "broad" or "narrow" waiver. See *Nordic Village*, 112 S. Ct. at 1014-1015.[2]

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[1] The statute this Court interpreted in *Library of Congress* v. *Shaw*, 478 U.S. 310 (1986), which stated that "the United States shall be liable for costs the same as a private person" (42 U.S.C. 2000e-5(k)) provides an example of a waiver phrased in far more "simple, sweeping language" than the McCarran Amendment. The Court nevertheless applied its traditional principles for construing waivers of sovereign immunity to that statute, see 478 U.S. at 318, and held that it did not waive the United States' distinct immunity from a form of monetary liability—in that case, liability for interest, see *id.* at 318-323.

[2] Idaho attempts to distinguish the McCarran Amendment based on this Court's general observation that "water rights adjudication is a virtually unique type of proceeding, and the McCarran Amendment is a virtually unique federal statute." See Idaho Br. 15, quoting *Arizona* v. *San Carlos Apache Tribe*,

Idaho provides no reason for departing from established sovereign immunity principles in this case. The principles that this Court has articulated provide clear guidance to legislatures, the courts, and the public. In contrast, Idaho's novel two-tiered approach —which would require courts to make a preliminary, ad hoc determination whether a waiver is "broad" or "narrow," and then to apply different rules of construction depending on that preliminary characterization—would add needless doctrinal complexity and confound the inquiry. The obvious purpose of Idaho's cumbersome two-step process is to loosen existing sovereign immunity standards, so as to produce a waiver of sovereign immunity where one would not otherwise exist.[3]

2. The question squarely presented, then, is whether the McCarran Amendment clearly and unambiguously waives federal sovereign immunity from state fee assessments. See U.S. Br. 15-17. The answer on the face of the statute is no. None of the McCarran Amendment's three relevant provisions—the joinder, pleading, and judgment provisions—contains an explicit waiver of immunity from monetary liability in any form. Despite Idaho's invocation of

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463 U.S. 545, 571 (1983). But such statements do not insulate the McCarran Amendment from rules of construction that normally apply to waivers of sovereign immunity. Indeed, only last Term, the Court reaffirmed that "[*a*]*ny* such waiver must be strictly construed in favor of the United States." *Ardestani* v. *INS*, 112 S. Ct. 515, 520 (1991) (emphasis added).

[3] The Idaho Supreme Court did not use Idaho's analytical approach, Pet. App. 6a-8a, and Idaho has not referred to any other court that has done so. See Idaho Br. 14-18.

the "plain language" of the statute (Idaho Br. 18), the State necessarily bases its arguments on other sources.

a. Idaho begins by asserting that this Court has "treated" the McCarran Amendment like "the 'sue or be sued' clauses associated with federal governmental corporations." Idaho Br. 19; see *id.* at 20-22.[4] This Court, however, has never made such a comparison. The analogy is Idaho's alone, and it is not accurate. The McCarran Amendment, which applies to the United States *in toto* (not merely to those instrumentalities that resemble private corporations), bears no textual similarity to the standard "sue and be sued" clause. See note 4, *supra*. Moreover, Idaho's comparison simply begs the question. The fundamental inquiry remains whether the McCarran Amendment contains an unequivocal expression of consent to fee assessments.[5]

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[4] As this Court has explained, Congress employs a "sue and be sued" clause as a term of art to waive the sovereign immunity of a particular government instrumentality, so that the instrumentality will be "treated similarly to other self-sustaining commercial ventures." *Franchise Tax Board* v. *United States Postal Service*, 467 U.S. 512, 525 (1984). See, *e.g.*, 39 U.S.C. 401(1) ("The Postal Service shall have the following general powers: (1) to sue and be sued in its official name.").

[5] Indeed, the fact that the McCarran Amendment does *not* contain the language of a "sue and be sued" clause persuasively suggests that Congress intended a more limited waiver of immunity that does not encompass monetary liability of any sort, including assessment of fees. Compare *Loeffler* v. *Frank*, 486 U.S. 549, 553 (1988) (holding that the Postal Service's "sue and be sued" clause gave that agency the "status of a private commercial enterprise" and subjected it to prejudgment interest), with *Library of Congress* v. *Shaw*,

b. Idaho's attempt to confront the actual language of the McCarran Amendment is no more successful. As we explain in our opening brief, Idaho has already acknowledged that the McCarran Amendment's joinder provision—which consents to joinder of the United States as a defendant in suits for the comprehensive adjudication of water rights if it appears that the United States is the owner of or is in the process of acquiring water rights "by appropriation under State law, by purchase, by exchange, or otherwise" (43 U.S.C. 666(a))—does not suffice as a waiver of immunity from state filing fees. See Idaho Br. in Opp. 15. Thus, Idaho appropriately concedes that the waiver it urges must be derived from the provisions of the McCarran Amendment that follow. See Idaho Br. 18-19.[6]

Idaho acknowledges that the McCarran Amendment's pleading provision—which states that the

478 U.S. 310, 317 & n.5 (1986) (retaining the "traditional legal rule regarding the immunity of the United States from interest" with respect to other agencies that do not have "the status of a private commercial enterprise").

[6] Idaho claims that our opening brief "selectively edits" and "misquotes" the State with respect to its interpretation of the joinder provision. Idaho Br. 19 n.11. Our brief, however, simply repeats the point that Idaho has conceded: mere joinder of the United States, without more, would not subject the United States to "special adjudication requirements," such as a requirement that a defendant pay filing fees. Idaho Br. in Opp. 15. In Idaho's words:

> Further consent was needed from Congress, beyond simply joining the United States in such suits, to require the United States to comply with these special adjudication requirements.

Ibid. Idaho's brief on the merits does not disavow that concession.

United States shall be "deemed to have waived any right to plead that the State laws are inapplicable," 43 U.S.C. 666(a)—"is the only sentence in the McCarran Amendment which explicitly approves of application of *state* laws to the United States." Idaho Br. 19 n.11 (emphasis in original). Idaho construes the pleading provision to waive the United States' immunity from filing fees by simply assuming—without regard to the preceding provisions of the McCarran Amendment—that the pleading provision's reference to "the State laws" means all "state laws pursuant to which adjudications are conducted." Idaho Br. 19, 22-24. Idaho's assumption is unwarranted.

As we explained in our opening brief, Congress's use of the definite article "the" before "State laws" indicates that the term refers to a particular body of "State law." See U.S. Br. 24-25. The particular body of "State law" is the one identified in the immediately preceding sentence—the "State laws" governing "aqui[sition of] water rights by appropriation." 43 U.S.C. 666(a). There is nothing "convoluted" (Idaho Br. 22) in that conclusion. It is consistent with familiar rules of grammar and statutory construction. See U.S. Br. 26-27. Indeed, it is precisely the way the Court reads similarly phrased statutes. See *Work* v. *United States ex rel. McAlester-Edwards Co.*, 262 U.S. 200, 208 (1923); see also *Freytag* v. *Commissioner*, 111 S. Ct. 2631, 2651 (1991) (Scalia, J., concurring).[7]

[7] Idaho and its amici assert that the joinder provision's reference to "State law" and the pleading provision's reference to "the State laws" cannot refer to the same body of law, because the first reference "is in the singular and is used

c. Idaho and the amici States rely heavily on legislative history in attempting to overcome our straightforward reading of the McCarran Amendment's text. See Idaho Br. 24-27; Amici States Br. 11-16. This Court, however, has rejected similar attempts to employ legislative history as a substitute for an express waiver of sovereign immunity. As the Court explained in *Nordic Village*,

> the "unequivocal expression" of elimination of sovereign immunity that we insist upon is an expression in statutory text. If clarity does not exist there, it cannot be supplied by a committee report.

112 S. Ct. at 1016. Here, the text of the McCarran Amendment does not contain the requisite "separate waiver," *Library of Congress*, 478 U.S. at 314, of the United States' distinct immunity from monetary liability, especially for fees and costs associated with litigation. In any event, Idaho and the amici States fail to point to any "unequivocal expression" in the legislative history that the United States would be subject to state filing fees as a condition for adjudication of its water right claims.

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as a modifier of the term 'appropriation'" and the second "is plural" and "is used as a noun." Idaho Br. 23; Amici States Br. 7-8. Idaho does not explain why those supposed distinctions should make a difference. For example, this Court concluded in *Work* that Congress used the term "the appraisement" in one statute (Act of Feb. 8, 1918, ch. 12, § 4, 40 Stat. 433-434) to identify the valuation specified in a prior statute, which stated that certain lands were to be "appraised by three appraisers" (Act of Feb. 19, 1912, ch. 46, § 1, 37 Stat. 67-68). See 262 U.S. at 202-203 & n.1, 206-208. Similarly, Congress certainly could use the term "the State laws" to identify its prior reference to a particular body of "State law." 43 U.S.C. 666(a).

The legislative history does not specifically discuss the meaning of the pleading provision. Idaho and the amici States simply cite general statements noting the desirability of joining the United States in state water right proceedings to obtain a comprehensive adjudication of all claims to a common resource. See Idaho Br. 25-27; Amici States Br. 11-16. Those statements do not imply that the United States additionally must *finance* the State's water right proceedings. Idaho and the amici States also rely on the fact that the Senate Report quoted from this Court's decision in *Pacific Live Stock Co.* v. *Lewis*, 241 U.S. 440 (1916), which, among other things, rejected a due process challenge to Oregon's imposition of modest filing fees against private parties. See Idaho Br. 33-34; Amici States Br. 20-21. The Senate Report, however, did not mention the decision in reference to filing fees; rather it cited the case for the general proposition that general stream adjudications require participation by all water users. S. Rep. No. 755, 82d Cong., 1st Sess. 5 (1951).[8]

d. Idaho characterizes our interpretation of the McCarran Amendment's pleading provision as "nonsensical," stating that "an additional waiver to state appropriation laws in the context of a general stream adjudication is unnecessary." Idaho Br. 27-28. We disagree. The McCarran Amendment's text reflects careful attention to the familiar and established prin-

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[8] Similarly, there is no relevance to the Senate Report's mention that in "some States" private water users pay an annual fee "for the services of water commissioners" to enforce "decreed rights." S. Rep. No. 755, *supra*, at 5. The Senate Report made that passing observation in the course of noting that those commissioners make recommendations concerning the administration of *adjudicated* rights. *Ibid.*

ciple that the United States is not only generally immune from suit, but also is normally exempt from state regulatory requirements that infringe federal interests. In the absence of an express congressional waiver, that principle of federal supremacy would apply with full force to state laws governing the acquisition of water rights by appropriation, just as it applies to other state laws.[9]

The pleading provision of the McCarran Amendment balances federal supremacy rights against the States' interest in protecting settled expectations of other water users by preventing the United States from invoking its sovereign prerogatives in a water rights adjudication as a *defense* to an allegation that the United States has failed to comply with state law requirements in obtaining a state water right. In the precise words of the statute, "[t]he United States, *when a party to any such suit*, shall * * * be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty." 43 U.S.C. 666(a) (emphasis added).[10] Thus, our interpretation is not only consistent with the precise terms of the McCarran Amendment—which waives the United States' immunity from certain claims made in a lawsuit—but it also produces a sensible result.[11]

[9] See, *e.g.*, *Hancock* v. *Train*, 426 U.S. 167 (1976) (state pollution control permit for a federal facility); *Leslie Miller, Inc.* v. *Arkansas*, 352 U.S. 187 (1956) (state licensing of contractors on federal projects); *Mayo* v. *United States*, 319 U.S. 441 (1943) (state assessment of fertilizer inspection fee); *Johnson* v. *Maryland*, 254 U.S. 51 (1920) (state motor vehicle licensing requirements); *Ohio* v. *Thomas*, 173 U.S. 276 (1899) (state prohibition on using margarine in a federal soldiers' home); *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

[10] By contrast, the pleading provision of the McCarran Amendment would not bar the United States from presenting objections to state law requirements prior to initiation of a water right adjudication suit authorized by that Amendment —*e.g.*, when it sought to acquire a state law right.

e. In accordance with its assertion that the McCarran Amendment should be interpreted by "pa[ying] special attention to the Congressional policy underlying the language of the Amendment," Idaho devotes much of its brief to policy-based arguments. Idaho Br. 15, 29-40. Idaho relies principally on this Court's statement in *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800,

[11] Idaho posits that the United States' position will give it free reign to "stall or disrupt" state proceedings. Idaho Br. 28-29. There is no merit to Idaho's speculation. Idaho points to no specific instances in which the United States has raised an immunity defense "to procedures such as deadlines for filing claims, objections and responses, evidentiary exclusions, discovery requirements or state law requirements regarding finality of judgments" (Idaho Br. 29). Indeed, the United States has no foreseeable cause to complain about customary rules of judicial procedure, provided that they are applied in an even-handed manner. We may assume for present purposes that the McCarran Amendment's consent to suit includes consent to filing deadlines and state procedures for reviewing substantive claims on the merits, provided that the procedures are not aberrational and uniquely burdensome. The issue here, however, is whether the McCarran Amendment contains an unequivocal expression of consent to state *monetary* assessments, which cannot be found in a waiver of immunity to suit on non-monetary claims. That question must be answered on the basis of what the McCarran Amendment says, and not on the basis of the State's desire to proceed with its suit—and associated revenue-raising measures—entirely unimpeded by questions of sovereign immunity.

819 (1976), that "the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights." It urges this Court to interpret the McCarran Amendment expansively in light of that policy so as to waive the United States' distinct immunity from filing fees. Idaho Br. 17, 29-31. According to Idaho, "so long as the procedure is part of a 'comprehensive state system' for the adjudication of water rights, the procedure is within the scope of the waiver." *Id.* at 29.

Idaho's argument fails on its own terms, because Idaho's filing fees are something quite different from the "procedures" used to adjudicate water rights. The filing fees simply provide revenue to pay the expenses of the court and another party. Idaho could conduct an adjudication that is procedurally identical in every respect using revenues from another source. In any event, Idaho's reliance on the "policy" of the McCarran Amendment, rather than the statutory language, is fundamentally flawed. This Court has rejected the notion that a statute should be interpreted by reference to its "broad purposes" rather than by careful analysis of the statutory text. See *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987) (per curiam). As the Court explained:

> [N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice —and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law.

Id. at 525-526 (emphasis in original). Thus, Idaho's basic interpretive approach is "plainly inconsistent

with important doctrines of statutory construction," *id.* at 526, especially as regards waivers of the United States' sovereign immunity.

Moreover, Idaho's argument is based on a misunderstanding of this Court's reference in *Colorado River* to "comprehensive state systems." 424 U.S. at 819. The Court explained that Congress has allowed joinder of the United States in general stream adjudications pursuant to the McCarran Amendment in response to the States' creation of "comprehensive" systems for adjudicating water rights, requiring the participation of all water users. See *ibid.* But this Court did not suggest that the McCarran Amendment waived the United States' immunity to any "State law" as long as it related to a "comprehensive state system." Rather, the Court simply recognized that the McCarran Amendment requires the existence of a "comprehensive" state adjudication that "reaches all claims" as a necessary precondition of joinder. *Id.* at 819-820. See *United States* v. *District Court in and for Water Div. No. 5*, 401 U.S. 527, 529-530 (1971).

Idaho accordingly is mistaken in arguing that the United States is automatically subject to filing fees because those fees are assessed in connection with a "comprehensive state system." Idaho Br. 29-31. Idaho has substantial latitude in fashioning a "comprehensive state system," including appropriate judicial procedures for adjudicating water rights, and it may join the United States as a defendant in the adjudication suit, provided that the McCarran Amendment's specific preconditions are met. But Idaho cannot demand that the United States *finance* those proceedings through the payment of filing fees, because Congress has not waived the United States' immunity from the State's proposed assessments.

Idaho's remaining policy arguments do not require extended discussion. Idaho attempts to justify its filing-fee regime on the grounds that: (i) Idaho drafted its adjudication statute in the expectation that the federal government would help finance the administrative expenses that the statute imposes (*id.* at 31); (ii) Idaho's filing fees do not violate the due process rights of private parties (*id.* at 33-35); and (iii) the United States supposedly benefits from the adjudication (*id.* at 37-40). Those arguments are all beside the point, because Idaho has failed to show that Congress has "unequivocally" consented to Idaho's assessment of filing fees against the United States. *Nordic Village*, 112 S. Ct. at 1014; cf. *Hancock* v. *Train*, 426 U.S. 167, 198-199 (1976).[12]

[12] Idaho makes several other arguments that warrant only brief mention. Idaho contends that "the United States admitted that the kinds of centralized services provided by Idaho and other states are an essential element of general stream adjudications" (Idaho Br. 31), citing a government brief filed in a Montana state court in 1987 (Idaho Br. 1a-42a). The United States filed that brief in response to a state court's use of "temporary preliminary decrees" to determine water right claims without giving the responsible state agency an opportunity to investigate and verify whether the claims were inflated. That brief says nothing about federal payment of filing fees. Idaho also suggests that the United States is not an "unwilling participant" in this suit, because representatives of certain federal agencies participated in the preparation of a technical committee report recommending the adjudication. See Idaho Br. 37-38. The committee report Idaho cites clearly states, however, that "this report is not a statement of position or opinion by any of the Committee members or their employers." Snake River Technical Advisory Committee, *Needed Water Resources Programs in the Snake River Basin* 3 (Nov. 1983).

3. As we explain in our opening brief (U.S. Br. 31-38), the McCarran Amendment not only lacks the requisite clear expression of congressional consent to filing fees, but the Amendment's "costs proviso"—which states that "no judgment for costs shall be entered against the United States in any such suit" (43 U.S.C. 666(a))—affirmatively indicates that the States are not entitled to impose monetary assessments against the United States.

Contrary to Idaho's characterization, we do not "portray the adjudication filing fee as a 'judgment for costs.'" Idaho Br. 40. Our point, instead, is that if Congress had intended that the United States share in the financing of state water adjudications, it would have allowed the States to recoup their expenses in the usual manner—through a judgment for costs. See U.S. Br. 5-6 (quoting Idaho Code § 42-1401 (1948), which authorized the State to recover its expenses of "examination and survey" through a judgment for costs). Congress made clear through the costs proviso, however, that a judgment for costs cannot be assessed against the United States. See U.S. Br. 31-32.

Idaho cannot avoid the clear import of the costs proviso by simply revising its adjudication statute so that assessments that were once collected through a "judgment for costs" are now collected through a "filing fee" mechanism. But that is exactly what Idaho has attempted to do here. The Idaho Code expressly states that the filing fees are assessed for the purpose of "financing the *costs* of adjudicating water rights." Idaho Code § 42-1414 (1990) (emphasis added). Idaho has attempted to evade Congress's prohibition on monetary assessments against the

United States through semantic legerdemain. See U.S. Br. 33-34.[13]

Idaho continues to insist that its fee assessments are distinguishable from a judgment for costs on the theory that the Director of Water Resources plays a "non-adversarial," "quasi-judicial" role in the adjudication suit. Idaho Br. 46-47. As we explain in our opening brief, that characterization is neither relevant nor accurate. The Director is designated by statute as a "party" who files "pleadings" with the court, Idaho Code §§ 42-1401A(7) & 1412(4) (1990), and the costs charged to the adjudication account and paid from the filing fees are indistinguishable from a judgment for costs. See U.S. Br. 35-38. Additionally, the State's claim that the filing fees will not be used to finance any litigation by the State

[13] Idaho also suggests that the costs proviso implicitly allows fee assessments, reasoning that "some states" charged filing fees when the McCarran Amendment was enacted, yet the proviso limits only judgments for "costs." Idaho Br. 42. See also Amici States Br. 20-23. Idaho overlooks the fact that Congress included the costs proviso to restrict the McCarran Amendment's judgment provision, which subjects the United States to the judgments of the court in a water adjudication. There was no need for Congress to include a "filing fees proviso" as well, because judgments are not used (under the Idaho statute or other statutes) to collect filing fees. Contrary to Idaho's assertions (Idaho Br. 42-43), it is not permissible to infer from the fact that some western States assessed filing fees at the time the McCarran Amendment was enacted, that Congress consented to the assessment of such fees against the United States—much less that it consented to Idaho's fee system. Only an express waiver of the United States' immunity to such exactions in the statutory text would suffice for that purpose, and the text of the McCarran Amendment contains nothing of the kind. U.S. Br. 30 n.12.

regarding federal reserved water rights (Idaho Br. 45 n.28) is incorrect.[14]

Even if Idaho were correct that "costs" and "fees" differ in this context, Idaho would still have failed to show the necessary waiver of immunity from fees. This Court expressly rejected similar reliance on congressional silence as a basis for finding a waiver of immunity in *Library of Congress*, 478 U.S. at 319 ("congressional silence does not permit us to read the provision as the requisite waiver of the Government's immunity"). Contrary to the position taken by Idaho, its amici and the Idaho Supreme Court, that principle is equally applicable here. See U.S. Br. 32.[15]

[14] The Director has asserted that he may file objections to federal reserved water rights, the adjudication bureau chief is paid from the adjudication account for such work, and the data used by the Director in objecting to federal reserved rights are developed using moneys paid from the adjudication account. Idaho's assertion also ignores the general litigation costs paid from the adjudication account, including costs for service of process, investigation for the Director's Report, preparation of the report, defense of the report, conduct of discovery, preparation of legal exhibits, drafting of pleadings, preparation of expert witnesses for trial, serving as witnesses at trial, and numerous other litigation-related expenses. See U.S. Br. 37.

[15] Idaho's reliance on legislative history (Idaho Br. 43-44) is misplaced for reasons we have already discussed. See pp. 8-9, *supra*. See Idaho Br. 43-44. The State identifies nothing in that history suggesting that Congress intended to prohibit a judgment for costs but to allow the assessment of filing fees serving the same purpose. Idaho simply points to a government witness's general statement that the McCarran Amendment would subject the United States to "17 different procedures." *Id.* at 44. See generally *Shell Oil Co.* v. *Iowa Department of Revenue*, 488 U.S. 19, 29 (1988) (statements of opponents to legislation do not provide authoritative inter-

For the foregoing reasons and the reasons stated in our opening brief, it is respectfully submitted that the judgment of the Idaho Supreme Court should be reversed.

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pretive guidance); see also *Garcia* v. *United States*, 469 U.S. 70, 76 (1984).

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